



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750-AI02

Defense Federal Acquisition Regulation Supplement: Clauses with Alternates—Contract Financing (DFARS Case 2013-D014)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) as part of a project to review clauses with alternates to create basic and alternate clauses structured in a manner to facilitate use of automated contract writing systems. This final rule addresses a contract financing clause.

DATES: Effective [Insert date of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Ms. Annette Gray, telephone 571-372-6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the Federal Register at 78 FR 48404 on August 8, 2013, to amend the DFARS to revise the

presentation in the DFARS of a part 232 contract financing clause with an alternate. The rule also proposed to add a separate prescription for the basic clause as well as the alternate. No public comments were submitted in response to the proposed rule.

II. Discussion

This final rule addresses the single DFARS part 232 clause that has an alternate, 252.232-7007, Limitation of Government's Obligation. In developing the final rule, DoD determined that the need for an alternate to the basic clause could be eliminated by making a minor change to paragraph (a) of the basic clause. The only difference between the basic clause and the alternate is the number of line items subject to incremental funding, which is information inserted by the contracting officer into paragraph (a) of the basic clause or the alternate clause. In the final rule, the alternate clause is being eliminated in its entirety as a result of an editorial change made to paragraph (a) of the basic clause. This change enables the contracting officer to tailor and use the basic clause, whether a single line item or multiple line items are being incrementally funded.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been performed and is summarized as follows:

This final rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.232-7007, Limitation of Government's Obligation. Paragraph (a) of clause 252.232-7007 is being modified to be used for single or multiple line items that are to be incrementally funded. The modification of paragraph (a) in the basic clause eliminates the need for an alternate clause; therefore the alternate clause is removed by this final rule.

The public did not raise any issues in response to the initial regulatory flexibility analysis. The Chief Counsel for Advocacy

of the Small Business Administration did not submit any comments in response to the rule.

Potential offerors, including small businesses, may be affected by this rule by seeing an unfamiliar format for this part 232 clause. According to the Federal Procurement Data System, in fiscal year 2012, DoD made approximately 270,000 contract awards (not including modification and orders) that exceeded the micro-purchase threshold, of which approximately 180,000 (67%) were awarded to small businesses. It is unknown how many of these contracts were awarded that included incremental funding. Nothing substantive will change in solicitations or contracts for potential offerors. The overall burden caused by this rule is expected to be negligible, and will not be any greater on small businesses than it is on large businesses.

This rule does not add any new information collection requirements. No alternatives were identified that will accomplish the objectives of the rule.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Amend section 252.232-7007 by—

- a. Removing the clause date "(MAY 2006)" and adding "(APR 2014)" in its place;
- b. Revising paragraph (a); and
- c. Removing Alternate I.

The revision reads as follows.

252.232-7007 Limitation of Government's obligation.

* * * * *

(a) Contract line item(s) [Contracting Officer insert after negotiations] is/are incrementally funded. For this/these item(s), the sum of \$ [Contracting Officer insert after negotiations] of the total price is presently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (j) of this clause.

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